

unless applicant proved that applicant did not receive the Office Communication mailed on January 17, 2006.

Applicant's attorney is submitting a sworn Affidavit to show that the said Office Communication was not received by regular mail by the Law Firm of Rashida A. Karmali, Esq at 99 Wall Street, 13<sup>th</sup> Floor, New York, NY 10005. See Affidavit, Exhibits 1 and 2.

Applicant request the United States Patent Office not to punish the applicant because of failure in the mailing procedure, and that the USPTO use July 11, 2006--- when the Examiner made the telephone inquiry on the Status of the application, as the date the Office Communication was mailed.

In any event, applicant takes the precaution to include herewith a Petition for Extension of Time for 5 months with fees, should the USPTO require it.

This Response is an Addendum to the Response to Restriction Requirement filed December 7, 2005.

#### REMARKS

Claims 1-23 are under consideration. Claims 17, 18 and 21 have been amended. Claims 19 and 20 are cancelled. Reconsideration of claims 1-18 and 21-23 is respectfully requested.

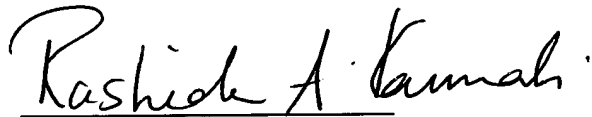
The Office Communication states that *"Applicant was requested (see page 3, lines 10-12 and page 4, lines 1-13 of Office Action dated October 7, 2005) to elect a single species [i.e., elect a single and specific antimicrobial agent (e.g., claim 13) and elect a single and specific bone growth factor (e.g., claims 3-4) for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. See 37 CFR 1.111."*

Applicant traverses this restriction for reasons given in the December 7, 2005 response. However, under 35 USC 121, applicant elects Group I to prosecute claims 1-16.

Applicant elects LLLFLLKKRKKRKY (Seq. ID. 4) as the single species in claim 13; and the single and specific bone growth factor from claims 3-4 to be TGF $\beta$ .

Applicant's attorney thank the Examiner for making the timely call about the status of the application before abandonment, but hopes that in future the Examiner would call at the time the Office Communication is issued to point a deficiency—this would within MPEP guidelines to make the prosecution efficient and prevent penalization applicants for failure in the postal system.

Respectfully submitted,

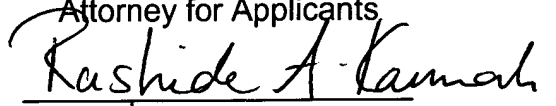
A handwritten signature in black ink, reading "Rashida A. Karmali". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Rashida A. Karmali, Esq.  
Reg. No. 43,705  
Attorney for Applicants  
99 Wall Street, 13<sup>th</sup> Floor  
New York, New York 10005

Date: July 12, 2006

**CERTIFICATE OF Express Mail TRANSMISSION**

I hereby certify that this correspondence is transmitted by Express Mail No. EQ  
403349051 US Addressed to Missing Parts under 37 C.F.R. 1.10 on December 6, 2005  
addressed to: Commissioner for Patents, Alexandria, VA 22313-1450.

Rashida A. Karmali  
Attorney for Applicants  
  
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Signature  
7/12/06  
\_\_\_\_\_  
Date of Signature